

**VIKING INSURANCE COMPANY OF WISCONSIN
9800 SOUTH MERIDIAN BOULEVARD
ENGLEWOOD, COLORADO 80112**

NAIC COMPANY CODE 13137

**MARKET CONDUCT EXAMINATION REPORT
as of June 30, 2004**

PREPARED BY DIVISION EMPLOYEE

AND

INDEPENDENT CONTRACTORS

FOR THE

**COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**Viking Insurance Company of Wisconsin
9800 South Meridian Boulevard
Englewood, Colorado 80112**

**MARKET CONDUCT
EXAMINATION REPORT
as of
June 30, 2004**

Prepared by

**John E. Bell
Market Conduct Examiner
Division of Insurance**

**Kathleen M. Bergan, AIE
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Independent Contract Examiners

April 20, 2005

The Honorable Doug Dean
Acting Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of Viking Insurance Company of Wisconsin of wisconsin's private passenger automobile business, has been conducted. The Company's records were examined at its Home Office and Regional Claims Center located at 9800 South Meridian Blvd., Englewood, Colorado and the Company's Regional Service Center located at 1125 Kiwanis Drive, Freeport, Illinois.

The examination covered a one-year period from July 1, 2003 to June 30, 2004.

A report of the examination of Viking Insurance Company of Wisconsin of wisconsin is, herewith, respectfully submitted.

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**MARKET CONDUCT
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OF THE
VIKING INSURANCE COMPANY OF WISCONSIN**

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COMPANY PROFILE

Viking Insurance Company of Wisconsin (hereinafter referred to as “the Company”) was incorporated under the laws of Wisconsin on August 10, 1971 and commenced business on September 15, 1971. The Company was redomiciled under the laws of Colorado in 1999.

The Company is owned by Orion Auto, Inc., a wholly-owned subsidiary of Royal and SunAlliance USA, Inc. which purchased the Viking Group as part of the acquisition of Orion Capital Corporation in 1999. Royal and SunAlliance Group, plc, is a holding company with headquarters in the United Kingdom.

The Company writes non-standard private automobile products with a variety of payment plans and is licensed to transact business in thirty-three (33) states.

*As of December 31, 2003, the Company had reported written premium in Colorado of \$14,870,000 for Private Passenger Automobile, representing .51% market share in Colorado.

* Data as reported in the 2003 Colorado Insurance Industry Statistical Report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by a Division employee as well as independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to Private Passenger Automobile insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from July 1, 2003 to June 30, 2004.

File sampling was based on a review of underwriting and claims files that were randomly selected by using ACL software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systematic, or when due to sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of examination (e.g. timeliness of claims payment), and if one or more samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five (5%) were also included.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The report addresses only Private Passenger Automobile issues and contains information regarding exceptions to the Colorado insurance law. The examination included review of the following:

1. Company Operations and Management
2. Underwriting and Rating
3. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Private Passenger Automobile underwriting and claims practices to determine compliance with the Colorado insurance law as outlined in Exhibit 1.

On July 1, 2003, the Colorado Auto Accident Reparations Act, also known as the motor vehicle no-fault insurance law was repealed pursuant to § 10-4-726, C.R.S. Upon enactment of HB 03-1188, the Colorado law index was changed to include modification and clarification of laws under Section 10-4-600. Because this examination included the repeal and the addition of new Colorado auto insurance laws during the period under examination, both No-Fault (PIP) and tort reform as well as additional legislative enactments and Division of Insurance Regulations during 2003 and 2004 are included in Exhibit 1.

Exhibit 1

Law	Subject
Colorado PIP/No fault Related laws	
Section 10-4-602.	Basis for Cancellation.
Section 10-4-603.	Notice.
Section 10-4-604.	Nonrenewal.
Section 10-4-605.	Proof of notice.
Section 10-4-609.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610.	Property damage protection against uninsured motorists.
Section 10-4-611.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613.	Glass repair and replacement.
Section 10-4-614.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-706.	Required coverage - complying policies - PIP examination program.
Section 10-4-706.5.	Operator's policy of insurance.
Section 10-4-707.5.	Ridesharing arrangements - benefits payable - required coverage.
Section 10-4-708.	Prompt payment of direct benefits.
Section 10-4-709.	Coordination of benefits.
Section 10-4-710.	Required coverages are minimum.
Section 10-4-711.	Required provision for intrastate and interstate operation.
Section 10-4-713.	No tort recovery for direct benefits.
Section 10-4-714.	Limitation on tort actions.
Section 10-4-715.	No limitation on tort action against non-complying tort-feasors.
Section 10-4-717.	Intercompany arbitration.
Section 10-4-718.	Quarterly premium payments.
Section 10-4-719.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 7.
Section 10-4-719.5.	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.
Section 10-4-719.7.	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.

Law	Subject
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Section 10-4-720.	Cancellation - renewal - reclassification.
Section 10-4-721.	Exclusion of named driver.
Section 10-4-724.	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course legislative declaration.
Section 10-4-725.	Certification of policy and notice forms.
Section 10-3-1103.	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1104.	Unfair methods of competition and unfair or deceptive acts or practices.
Regulation 1-1-6	Certification of Forms
Regulation 1-1-7.	Market Conduct Record Retention.
Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests.
Regulation 5-1-2.	Application and Binder Forms.
Regulation 5-1-10.	Rate and Rule Filing Regulation
Regulation 5-1-16.	Limitations on the Use of Credit Information or Insurance Scoring.
Regulation 5-2-1.	Relative Value Schedule for No Fault.
Regulation 5-2-2.	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-3.	Auto Accident Reparations Act (No Fault) Rules and Regulations.
Regulation 5-2-6.	Automobile No Fault Cost Containment Options.
Regulation 5-2-8.	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9.	Personal Injury Protection Examination Program.
Regulation 6-1-1.	Limiting coverage.
Regulation 6-2-1.	Complaint Record Maintenance.
Tort Reform Legislation and Revised laws- Effective July 1, 2003	
Section 10-4-615	Motorist insurance identification database program.
Section 10-4-616	Disclosure of credit reports.
Section 10-4-617	Auto theft prevention authority.
Section 10-4-618	Unfair or discriminatory trade practices legislative declaration.
Section 10-4-619	Coverage compulsory.
Section 10-4-620	Required coverage.
Section 10-4-621	Required coverages are minimum.
Section 10-4-622	Required provision for intrastate and interstate operation.
Section 10-4-623	Conditions and exclusions.
Section 10-4-624	Self-insurers.
Section 10-4-625	Quarterly premium payments.
Section 10-4-626	Prohibited reasons for nonrenewal or refusal to write a policy of Automobile insurance.
Section 10-4-628	Refusal to write-changes in-cancellations-nonrenewal

Law	Subject
Section 10-4-629	Cancellation-renewal-reclassification.
Section 10-4-630	Exclusions of named driver.
Section 10-4-631	Insurers to file rate schedule.
Section 10-4-632	Reduction in rates for drivers aged fifty-five or older who Complete a driver's education course-legislative declaration.
Section 10-4-633	Certification of policy and notice forms.
Regulation 5-2-11	Transition from No-fault Auto to Tort Reform.
Regulation 5-2-12	Concerning Automobile Insurance Consumer Protections.
Emergency Regulation 03-E-2, 5, and 10	Transition from No-Fault Auto to Tort System.

Company Operations/Management

The examiners reviewed Company management, implementation of quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

Contract Forms and Endorsements

The following Private Passenger Automobile forms and endorsements were reviewed for compliance applicable to the period under examination as filed with the Colorado Division of Insurance:

Form Title	Form Number
Colorado Acceptance or rejection	A1205CO 7/03
Additional Insured Lessor Endorsement	AIL1 3/99
Broad Form Named Driver Endorsement (paper version)	BFN-CO 5/00
Broad Form Named Driver Endorsement (Electronic version)	BFN1a-CO 5/00
Renewal Offer with credit	CO3100 12/97
Renewal Offer without credit	CO3110 12/97
Corrected Renewal Offer with credit	CO3300 12/97
Corrected Renewal Offer without credit	CO3310 12/97
Cancellation Notice with Consumer Report	CO3700 4/01
Cancellation Notice without Consumer Report	CO3710 4/01
Nonrenewal Notice with Consumer Report	CO3900 4/01
Nonrenewal Notice Without Consumer Report	CO3910 4/01
Increase in Premium Notice	CO3950 4/01
Cancellation Notice (due to NSF)	CO4060 5/00
Car Policy	CP1 3/99
Car Policy Amendatory Endorsement –CO	CPA-CO 7/03
CO Automobile Application	L1101CO 7/03
Lienholder Deductible Endorsement	LDE1 11/99
Loss Payable Endorsement	LH1 3/99
Named Driver Exclusion Endorsement (Paper Version)	NDE1 3/99
Named Driver Exclusion Endorsement (electronic version)	NDE1a 3/99
Managed Care Program & Temporary Claim Card (Electronic Version)	PHN1a-CO 10/02
Personal Injury Protection Endorsement	PIP1-CO 10/02

Balance Due Notice (Due to policy change)	PL5601 5/00
Balance Due Notice (Due to policy reinstatement)	PL5611 5/00
Rental Reimbursement/Transportation Expense Endorsement	RR1 3/99
CO Private Passenger Automobile Disclosure Form	SD1-CO 7/03
Special Customized Equipment Endorsement	SE1 3/99
Towing and Labor Costs Coverage Endorsement	TL1 3/99
UM/UIM Coverage Endorsement-CO	UM3-CO 7/03
UMPD Coverage Endorsement-CO	UM6-CO 7/03
Declarations Page	No Form Number

In-Force /Cancellations/Nonrenewals/Surcharges/Renewals

For the period under examination, the examiners randomly selected the following underwriting samples to determine compliance with underwriting practices:

Underwriting Lists	Population	Sample Size	Percentage to Population
In-Force	84,373	100	0%
Cancellations for cause	5,449	100	1.8%
Nonrenewals	74	50	67.6%
Surcharges	1,015	50	11.4%
PIP Conversion	7,996	100	1.25%

Rating

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was then compared against a sample of policies, rated by coverage, to determine compliance with base rates, territory codes, symbols, discounts, and final premium calculations.

Claims

For the period under examination, the examiners randomly selected the following samples to determine compliance of claims handling practices:

Claim Lists	Population	Sample Size	Percentage to Population
Claims Paid	1,283	50	4%
Claims Denied	265	50	19%
PIP paid claims	93	50	54%

EXAMINATION REPORT SUMMARY

At the beginning of the examination, the examiners met with the staff and examination coordinator to discuss the entire audit review process. One of the topics addressed was the fact that although Viking Insurance Company of Wisconsin and Guaranty Insurance Company (GNIC) are separate companies, there were many common claim procedures and practices which were handled in the same location and overseen by the same administrative management.

Therefore, it was agreed by all parties involved, the Company, the Colorado Division of Insurance, and the examiners, that in those cases where it appeared that a comment form may be applicable to the other company in the group, the examiners would include an option in the final examination report to “deem” the findings applicable to both companies, even though the actual claim findings may have been exclusively identified as related to Viking Insurance Company of Wisconsin of Wisconsin during the scope of the examination from July 1, 2003-June 30, 2004.

The Colorado Division of Insurance reserves the right to conduct an examination of any Company of the group should circumstances arise which would warrant another examination.

The examination resulted in seven (7) issues arising from the Company’s apparent failure to comply with Colorado insurance law that govern all property and casualty insurers operating in Colorado. These issues involved the following categories:

Company Operations and Management:

In the area of company operations and management, there are no issues addressed in this report.

Underwriting and Rating:

In the area of underwriting, three (3) compliance issues are addressed in this report. Issues arise from Colorado insurance law requirements that must be complied with whenever policies are issued, canceled, rejected, non-renewed, or surcharged. The issues in this phase of the examination are identified as follows:

- **Failure to file an actuarial justification to support a prior insurance discount.**
- **Failure of the Company, in some cases, to use a complying reason to nonrenew PPA policies.**
- **Failure of the Company, in some cases, to correctly apply coverage selected by applicant to PPA policies.**

It is recommended that the Company review its underwriting practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as it relates to this issue.

Claim Practices:

In the area of claim practices, four (4) compliance issues are addressed in this report. Issues arise from Colorado insurance law requirements dealing with the fair and equitable settlement of claims, claims handling practices, payment of PIP claim benefits, and the timeliness and accuracy of claim payments. The issues in this phase are identified as follows:

- **Failure, in some cases, to compensate a claimant for the loss of use of their vehicle while repairs are being made.**
- **Failure of the Company, in some cases, to maintain claim records to clearly show the handling and disposition of each claim.**
- **Failure, in some cases, to pay personal injury protection benefits in the timely manner required by Colorado insurance law.**
- **Failure, in some cases, to send a letter to the claimant and/or health care provider Setting forth the reasons why additional time is needed to investigate a claim.**

It is recommended that the Company review its claim handling practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

VIKING INSURANC COMPANY

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS

UNDERWRITING AND RATING

Issue A: Failure to file an actuarial justification to support a prior insurance discount.

Section 10-4-628, C.R.S., Refusal to write-changes in-cancellation-nonrenewal of policies prohibited, states in part:

(2) (a) (I) No insurer shall cancel; fail to renew; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy solely because the insured person has been convicted of an offense related to the failure to have in effect compulsory motor vehicle insurance or because such person has been denied issuance of a motor vehicle registration for failure to have such insurance.

(II) Unless actuarial justification in support of the insurer's action that has been filed with the commissioner demonstrates that there is an increase in risk, no insurer shall refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan based solely upon:

(A) The fact that the applicant had no prior insurance;

(B) The identity of the applicant's prior insurer; or

(C) The applicant's prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.

(III) An insurer may use industry-wide data in its actuarial justification under subparagraph (II) of this paragraph (a).

(IV) An insurer shall not refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan solely because the applicant had no prior insurance if the applicant was not required to have insurance under section 10-4-620 or under a similar law in another state.

In addition, Colorado Amended Regulation 5-2-3 (E)(1)(b)(1) (Effective May 1, 2001) Auto Accident Reparations Act (No-Fault) Rules and Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of §§ 42-1-204, 10-4-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S., states in part:

2. Notice of proposed actions.

a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-720 (2), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled “Your Right to Protest”, the following premium payment instructions:

In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company’s action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

Additionally, Colorado Regulation 5-2-12 (B)(1)(B)(Effective February 1, 2004) Concerning Automobile Insurance Consumer Protections as promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4) and 10-1-109, C.R.S. states:

B. Rules Limiting Insurers’ Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

1. Basis for refusal to write a policy of automobile insurance.

B. Unless actuarial justification in support of the insurer’s action has been filed with the Division of Insurance, insurers shall not refuse to write a policy for new applicants, surcharge premiums of new applicants or place new applicants in higher priced programs or plans solely based on:

(1) The fact that the applicant had no prior insurance;

(2) The identity of the applicant’s prior insurer; or

(3) The applicant’s prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.

In the review of the rate filings, it was noted that the Company did not include an actuarial justification for no discounts to applicants without prior insurance. In reviewing correspondence between the Company and the Colorado Division of Insurance, it appears that the Division requested that the Company submit an actuarial justification at the time the Company submits a revised rate filing. The Company did submit an amended rate filing for tort conversion and should have submitted this justification as requested by the Colorado Division of Insurance.

Recommendation Number 1:

Within thirty (30) days, the Company should provide documentation demonstrating the reasons it should not be considered in violation of Section 10-4-628 C.R.S. and Colorado Regulations 5-2-3 and 5-2-12. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its practices and procedures and implemented a plan to ensure that all requested information be included in rate filings and that they are complete and in compliance as required by Colorado insurance law.

Issue B: Failure of the Company, in some cases, to use a complying reason to nonrenew Private Passenger Automobile policies.

Colorado Amended Regulation 5-2-3 (5)(b) (Effective May 1, 2001) Auto Accident Reparations Act (No-Fault) Rules and Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of §§ 42-1-204, 10-4-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S., states in part:

5. Unacceptable reasons for refusal to renew a policy of automobile insurance include, but are not limited to the following:

b. The previous producer no longer represents the company.

Additionally, Colorado Regulation 5-2-12 (5)(B) (Effective February 1, 2004) Concerning Automobile Insurance Consumer Protections as promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4) and 10-1-109, C.R.S. states in part:

5. Unacceptable reasons for refusal to renew a policy of automobile insurance include, but are not limited to the following:

a. Colorado law prohibits discrimination solely based on age, color, sex, national origin, residence, marital status, or lawful occupation, including the military service. Prohibited underwriting or rating practices may not be used in combination with any other practice when use of the prohibited practice results in a rejection, cancellation, nonrenewal, reclassification, or reduction in coverage, which would not have occurred but for the prohibited practice. It is also prohibited to refuse to write a policy of insurance affording the coverages required by -§10-4-620, C.R.S., solely because another insurer has canceled a policy, or refused to write or renew such policy. In addition, it is prohibited to make or permit to be made any classification solely on the basis of blindness, or specific physical disability, unless such classification is based upon expected risk of loss different from that of other individuals. Further, no insurer shall refuse to insure a vehicle solely because a blind person owns the vehicle.

B. The previous producer no longer represents the company.

During the review of nonrenewals, it was noted that the Company was nonrenewing policies for producer or agent no longer representing the Company.

**Private Passenger Automobile Policies Nonrenewed
July 1, 2003-June 30, 2004**

Population	Sample Size	Number of Exceptions	Percentage to Sample
76	50	27	54%

An examination of fifty (50) policies nonrenewed, representing 66% of policies nonrenewed by the Company during the period under examination, showed twenty-seven (27) exceptions (or 54% of the sample) wherein the Company appeared to use a non-qualifying reason to nonrenew a policy. There were twenty-seven (27) policies nonrenewed due to the producer no longer representing the Company.

Recommendation Number 2:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Regulations 5-2-3 and 5-2-12. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it will use specific and complying reasons for the nonrenewal of policies and ensure compliance with Colorado Insurance law.

Issue C: Failure of the Company, in some cases, to correctly apply coverage selected by an applicant for new Private Passenger Automobile policies.

Section 10-4-609, C.R.S., Insurance protection against uninsured motorists- applicability, states, in part:

- (1) (a) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle licensed for highway use in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 42-7-103 (2), C.R.S., under provisions approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting there from; except that *the named insured may reject such coverage in writing.* [Emphasis added].

In addition, Section 10-4-623, C.R.S., (Effective July 1, 2003) Condition and exclusions states in part:

- (3) (a) The coverage described in section 10-4-620 is conditioned upon the insurer offering coverages pursuant to section 10-4-609 (1).
- (b) *The insurer shall be deemed to have complied with the requirements of section 10-4-609 (1) and the exclusion of the insured from uninsured motorist coverage shall be deemed valid if the named insured has rejected the uninsured motorist coverage in writing.* [Emphasis added]. Such exclusion shall be continuing until such time as the insured requests that the insurer provide uninsured motorist coverage. The insurer shall not have a duty to offer uninsured motorist coverage after receiving the insured's written request for exclusion even though:

In reviewing new business applications, it was noted that the Company did not correctly apply the UM/UIM coverages chosen by the applicant. On five (5) selection forms completed by applicants, the coverage was misapplied whereby an applicant had indicated a desire to reject the coverage but it was added to the policy, or the applicant accepted UM, but rejected UIM and UM with the rejected coverage was added to the policy.

The following demonstrates the New Business population, sample size and exceptions related to new business selection forms:

**Private Passenger Automobile New Business
July 1, 2003-June 30, 2004**

Population	Sample Size	Number of Exceptions	Percentage to Sample
50,292	100	5	5%

An examination of 100 policies written during the period under review, representing .2% of all private passenger automobile policies written by the Company, showed five (5) instances (5% of the sample) in which it appears that the Company failed to correctly apply the UM/UIM coverage to new policies.

Recommendation Number 3:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-609 and 10-4-623, C.R.S. In the event that Company is unable to provide such documentation, it should be required to provide evidence that it has changed its procedure concerning applying the proper UM/UIM coverage to policies from executed selection forms by the applicant in order to comply with the requirements of Colorado insurance law.

PERTINENT FACTUAL FINDINGS

CLAIMS

Issue D: Failure, in some cases, to compensate a claimant for the loss of use of his or her vehicle while repairs were being made.

Section 10-3-1104(1)(h), C.R.S., Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

- (VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; or....

Private Passenger Auto - Paid Claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
1,283	50	6	12%

An examination of fifty (50) files, representing 4% of all files with payments issued during the period under examination revealed six (6) exceptions (12% of the sample) wherein the Company failed to compensate a claimant for the loss of use of his or her vehicle during the time repairs were being made. In all these instances, the Company paid for the cost of repairs to the vehicle. There was no indication in any of these files that compensation was requested, but denied or offered, but refused.

Recommendation Number 4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended its claim settlement procedures to ensure compliance with Colorado insurance law.

Issue E: Failure of the Company, in some cases, to maintain claim records to clearly show the handling and disposition of each claim.

Colorado Insurance Regulation 1-1-7, MARKET CONDUCT RECORD RETENTION, promulgated under the authority of §10-1-109(1), C.R.S.:

Section 4. Records Required For Market Conduct Purposes

Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

Section 6. Claim Records

The claim records shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim records shall be sufficiently clear and specific so that pertinent events and dates of the events can be reconstructed.

Private Passenger Auto - Paid Claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
1,283	50	6	12%

An examination of fifty (50) files, representing 4% of all files with payments issued during the period under examination revealed six (6) exceptions (12% of the sample) wherein the Company failed to include in the claim file information relating to the loss of use of the claimant vehicle while it was being repaired. There was no information indicating the claimant had refused compensation for loss of use or the Company had denied compensation for loss of use. It was not possible to determine how this matter was handled.

Recommendation Number 5:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended its claims settlement procedures to ensure compliance with Colorado insurance law.

Issue F: Failure of the Company, in some cases, to pay personal injury protection benefits in the timely manner required by Colorado insurance law.

Section 10-4-708, C.R.S., Prompt payment of direct benefits, provides:

- (1) Payment of benefits under the coverages enumerated in section 10-4-706(1)(b) to (1)(c) or alternatively, as applicable, section 10-4-706(2) or (3) shall be made on a monthly basis. *Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period* [emphasis added]; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same.

Private Passenger Auto PIP Paid Claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
93	50	12	24%

An examination of fifty (50) Personal Injury Protection claim files, representing 54% of all PIP files with payments issued during the period under examination showed twelve (12) exceptions (24% of the sample) with nineteen (19) instances in the twelve (12) files, wherein the Company failed to make payment in the timely manner required by Colorado law. In all nineteen (19) instances, the Company made payment later than thirty days after receipt of proof of the fact and amount of expenses incurred.

Recommendation Number 6:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-708, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended its procedure regarding the payment of PIP benefits to ensure compliance with Colorado insurance law.

Issue G: Failure, in some cases, to send a letter to the claimant and/or health care provider setting forth the reasons why additional time is needed to investigate a claim.

Regulation 5-2-8, effective 9/01/2000 and Amended Regulation 5-2-8 effective 2/01/2004, Timely Payment of Personal Injury Protection Benefits, promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue pursuant to Sections 10-1-109, 10-4-704, 10-4-08(1.3), and 10-3-1110(1), C.R.S., provides:

A. PROMPT INVESTIGATION OF PIP CLAIMS

Section 10-3-1104(1)(h)(III), C.R.S., requires insurers to adopt and implement reasonable standards for the prompt investigation of claims. An insurer is also required to promptly investigate a claim while it is accumulating claim's expense.

Whenever an insurer requires that an application for benefits form be submitted by an injured party, the insurer shall forward the form to the injured party upon notification of the injury.

When an investigation is incomplete or is otherwise continued, the insurer shall, within 30 days after the documents are received as described in C. below and every 30 days thereafter, send to the claimant or the claimant's representative, and the health care provider, if applicable, a letter setting forth the reasons additional time is needed for investigation.

Where additional information is required to complete an investigation, the insurer shall request such information, *specifically listing the items needed to complete the investigation*. [emphasis added] A copy of such request shall be delivered to the claimant, the claimant's representative, the health care provider or other person or entity most likely in possession of the required information.

B. PROMPT PAYMENT OF PIP BENEFITS

Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in §10-4-706, C.R.S. are overdue if not paid with 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

Section 10-4-708(1), C.R.S., allows for the accumulation of claims expense for periods not exceeding one month and provides that benefits are not overdue if paid within 15 days after the end of a defined period of accumulation. An insurer is permitted by this statute to pay a bill within 15 days after the end of a defined accumulation period only when there is a reasonable likelihood that multiple providers are involved and more than one bill is received during the accumulation period.

And, at D. NOTICE REQUIREMENTS

If an insurer does not pay a claim for benefits under §10-4-706, C.R.S. within 30 days of receipt of the appropriate documents described in this regulation and as set forth in §10-4-708, C.R.S., the insurer shall immediately notify the PIP claimant or the claimant's representative and the health care provider, if applicable, of the reason(s) the claim has not been paid. If the claim has not been paid because an investigation is underway, the insurer shall document in the claim file the actions being taken to investigate the claim and the efforts being made to promptly conclude the investigation. [Emphasis added]

Private Passenger Auto - PIP Paid Claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
93	50	12	24%

An examination of fifty (50) Personal Injury Protection claim files, representing 54% of all PIP files with payments issued during the period under examination showed twelve (12) exceptions (24% of the sample) with nineteen (19) instances in the twelve (12) files, wherein the Company failed to send a letter to the claimant and/or health care provider setting forth reasons why additional time is needed to investigate a claim.

Recommendation Number 7:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended its claim settlement procedures to ensure compliance with Colorado insurance law.

SUMMARY OF RECOMMENDATIONS

<u>ISSUE</u>	<u>RECOMMENDATION NUMBER</u>	<u>PAGE NUMBER</u>
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Issue C. Failure of the Company, in some cases, to correctly apply coverage selected by an applicant for new Private Passenger Automobile policies.	4	21
Claims		
Issue D. Failure, in some cases, to compensate a claimant for the use of his or her vehicle while repairs were being made.	5	23
Issue E. Failure of the Company, in some cases, to maintain claim records to clearly show the handling and disposition of each claim.	6	24
Issue F. Failure of the Company, in some cases, to pay personal injury protection benefits in a timely manner as required by Colorado insurance law.	7	25
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